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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN MANUEL HERNANDEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 04-71663

Agency No. A072-865-198

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Juan Manuel Hernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen and his motion to reconsider. We have jurisdiction under 8 U.S.C. § 1252. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

review for abuse of discretion the denial of a motion to reopen or reconsider.

Cano-Merida v. INS, 311 F.3d 960, 964 (9th Cir. 2002). We dismiss in part and deny in part the petition for review.

We lack jurisdiction over Hernandez's contention that the BIA acted *ultra vires* in issuing his deportation order in the first instance because he did not exhaust this claim. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

The BIA did not abuse its discretion or violate due process in denying Hernandez's motion to reconsider because the motion failed to identify any error of fact or law in the BIA's July 9, 2003 decision. *See* 8 C.F.R. § 1003.2(b)(1).

The BIA did not abuse its discretion or violate due process in denying Hernandez's motion to reopen to apply for adjustment of status where Hernandez did not show prima facie eligibility for the relief sought. *See id.* § 1003.2(c)(1) (a motion to reopen to seek relief must be accompanied by the appropriate application and all supporting documentation).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.